

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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TERESA L. O'NEIL
CLERK US DIST COURT
WD OF WI

UNITED STATES OF AMERICA,

Plaintiff,

v.

WASTE MANAGEMENT
OF WISCONSIN, INC.

Defendant.

Civil Action No.

Judge

07 C 0424 C

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606, 9607 ("CERCLA"). The United States seeks injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at or from the Hagen Farm Superfund Site ("Site") in Dane County, Wisconsin. The United States also seeks to recover unreimbursed costs incurred and to be incurred for response actions undertaken or to be undertaken in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and over Defendant pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. §§ 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred within this judicial district.

THE SITE

4. The Hagen Farm Superfund Site encompasses a former waste disposal pit comprising approximately 10 acres located on an approximately 28-acre property at 2318 County Highway A, approximately one mile east of the City of Stoughton, Dane County, Wisconsin, as well as an underlying plume of contaminated groundwater where hazardous substances have come to be located.

5. The Site was listed on the CERCLA National Priorities List ("NPL") on or about July 22, 1987. The NPL, established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and 40 C.F.R. Part 300, lists sites throughout the United States that, because of releases or threatened releases of hazardous substances, pose a significant threat to human health and the environment.

6. Defendant, Waste Management of Wisconsin, Inc. ("WMWI"), with another party, conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the Site from 1988 to 1992.

7. On or about September 17, 1990, EPA selected a response action for the Source Control Operable Unit at the Site. The selected remedy for the Source Control Operable Unit includes consolidation and capping of the waste and installation of an in-situ vapor extraction system.

8. On or about September 30, 1992, EPA selected a response action for the Ground Water Control Operable Unit at the Site. The selected remedy for the Ground Water Control Operable Unit includes extraction and treatment of contaminated ground water, ground water monitoring, and ground water use restrictions.

THE DEFENDANT

9. Defendant Waste Management of Wisconsin, Inc. is a corporation organized under the laws of the State of Wisconsin. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

10. The Site is a "facility" within the meaning of 42 U.S.C. § 9601(9).

11. A "release" or threatened "release" of "hazardous substances" into the environment has occurred at or from the Site, as those terms are defined in Section 101(14) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(14) and 9601(22).

12. As a result of the releases or threatened releases of hazardous substances into the environment at the Site, the United States has incurred in excess of \$200,000 in unreimbursed response costs, excluding prejudgment interest, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States is continuing to incur response costs in connection with the Site.

13. Defendant holds title to all or part of the Site, including without limitation the former waste disposal pit referred to in Paragraph 4, above.

FIRST CLAIM FOR RELIEF -- CERCLA SECTION 106(a)

14. The allegations contained in paragraphs 1 - 13 are realleged and incorporated herein by reference.

15. Section 106(a) of CERCLA, 42 U.S.C. § 9605(a), provides in pertinent part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

16. The President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

17. EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or to the environment at the Site because of the release and threatened release of hazardous substances.

18. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

19. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the defendant is liable to implement the response action selected by EPA for the Site, in order to abate conditions at the Site that may constitute an imminent and substantial endangerment to public health or welfare or the environment.

SECOND CLAIM FOR RELIEF

20. The allegations contained in paragraphs 1-13 are realleged and incorporated herein by reference.

21. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or facility,

... from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).

22. Defendant is within the class of persons described in Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

23. The actions taken by the United States in connection with the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with which the United States has incurred and will continue to incur costs.

24. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable for all unreimbursed response costs incurred by the United States in connection with responses to releases or threatened releases of hazardous substances at the Site, and all future response costs to be incurred by the United States in connection with responses to releases or threatened releases of hazardous substances at the Site, including but not limited to costs of investigation, remedial action, removal action, oversight and enforcement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Order Defendant Waste Management of Wisconsin, Inc. to perform the response actions for the Site selected in EPA's Record of Decision dated September 17, 1990 and in EPA's Record of Decision dated September 30, 1992;
2. Enter judgment against Defendant Waste Management of Wisconsin, Inc. to reimburse all unreimbursed past response costs incurred by the United States;
3. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendant Waste Management of Wisconsin, Inc. will be liable for all further response costs to be incurred by the United States not inconsistent with the National Contingency Plan in connection with the Site; and
4. Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

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Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MISCELLANEOUS
ORDER

If, prior to the preliminary pretrial conference in a civil case, any party files a dispositive motion, the following schedule will apply. The moving party is to file and serve its brief together with the motion; the opposing party has 21 days to respond and the moving party has 10 days to reply.

Entered this 26th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge

NOTICE TO COUNSEL:

To enable judges of the court to evaluate possible disqualification or recusal, a nongovernmental corporate party shall file with its first appearance, pleading, petition, motion response, or other request this disclosure statement. Promptly file a supplemental statement upon any change in the information.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

v.

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Case No. _____

DISCLOSURE STATEMENT

_____ makes the following disclosure in compliance with Federal Rule of Civil Procedure 7.1:

1. Does the named party have a parent corporation?

YES _____

NO _____

If the answer is YES, identify below the parent corporation:

2. Is 10% or more of the named party's stock owned by a publicly owned corporation?

YES _____

NO _____

If the answer is YES, identify below the owners:

(Signature of Counsel)

(Date)

UNITED STATES DISTRICT COURT

District of _____

Plaintiff
V.

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Case Number: _____

Defendant

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented

Signatures

Date

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to _____
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C.
§636(c) and Fed.R.Civ.P. 73.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED
ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.